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January 2, 2003

By Hand Delivery

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Secretary
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Washington, D.C. 20554

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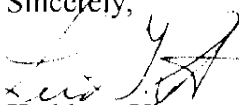
Re: Comments of Pappas Telecasting Companies
MB Docket No. 02-277

Dear Ms. Dortch:

Transmitted herewith, on behalf of Pappas Telecasting Companies (FRN: 0004-3142-33), is an original and nine copies of its Comments in the above-referenced proceeding.

Should any questions arise concerning this application, please communicate with this office.

Sincerely,



Kathleen Victory

Lee G. Petro

Enclosures

cc: Qualex International (via electronic mail)
Ms. Linda Senecal, Industry Analysis Division
Media Bureau - Room 2-C438
(via Hand Delivery and electronic mail)

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Before the
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In re: _____
2002 Biennial Regulatory Review –
Review of the Commission's Broadcast
Ownership Rules and Other Rules
Adopted Pursuant to Section 202
of the Telecommunications Act _____

MB Docket No. 02-277

TO: THE COMMISSION

COMMENTS OF
PAPPAS TELECASTING COMPANIES

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January 2, 2003

SUMMARY

The Commission released an omnibus Notice of Proposed Rulemaking, seeking comment on all facets of its broadcast and cable ownership regulations. Pappas Telecasting Companies owns and/or operates 19 full-power television stations, the vast majority of which are network affiliates. Based on the decisions in *Fox Television, Inc.* and *Sinclair Broadcast Group*, *see infra*, the Commission is seeking comment as to whether the modification or elimination of the local and national television ownership rules would serve the public interest, convenience and necessity.

As discussed herein in more detail, Pappas urges the Commission to maintain the national television ownership cap at 35%. Pappas also urges the Commission to adopt a modified local television ownership rule that will preserve a diverse and vibrant local media market by more accurately reflecting the diversity in today's local video programming marketplace while taking into account the economic challenges faced by local broadcasters in small and medium markets.

Based on Pappas's substantial experience in owning, operating, and affiliating television stations with network entities, Pappas strongly believes that the national television ownership cap is one of the last structural safeguards remaining to protect localism and diversity, and to ensure a competitive video marketplace.

Pappas further believes that the Commission should modify the current local television ownership rule to more accurately measure the diversity of options available to viewers in today's local marketplace. Pappas supports a redefinition of the local television market that would focus on the total viewing audience share in the market, **and** that **would** take into account all of the video programming alternatives actually available in each local market.

TABLE OF CONTENTS

SUMMARY	i
TABLE OF CONTENTS.....	ii
BACKGROUND	4
A. <u>Regulatory History of Local and National Television Ownership Rules</u>	4
B. <u><i>Fox Television</i> and <i>Sinclair Broadcast Group</i> Decisions</u>	5
DISCUSSION	7
A. <u>The National Television Ownership Rule Must Be Retained</u>	7
1. Public Interest Benefits of the Audience Cap	7
2. Preservation of Balance-of-Power Between Networks and Affiliates	9
B. <u>The Local Television Ownership Rule Must Be Modified to Reflect The State of Local Television Market</u>	12
CONCLUSION	16

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re:

**2002 Biennial Regulatory Review –
Review of the Commission’s Broadcast
Ownership Rules and Other Rules
Adopted Pursuant to Section 202
of the Telecommunications Act**

MB Docket No. 02-277

TO: THE COMMISSION

**COMMENTS OF
PAPPAS TELECASTING COMPANIES**

Pappas Telecasting Companies (“Pappas”), by and through its attorneys, and pursuant to Section 1.415 of the Commission’s rules, 47 C.F.R. § 1.415 (2001), hereby submits the following Comments in the above-referenced proceeding

Pappas, founded in 1971 and headquartered in Visalia, California, is one of the largest privately-held owners of broadcast television stations in the United States. Through its affiliated entities, Pappas currently is the licensee or permittee of 15 full-power television stations, operates four additional full-power stations pursuant to local marketing agreements, and is the provider of free over-the-air local television programming in 14 markets in nine states across the country’ The vast majority of these stations are affiliates of the Fox Television Network (5

¹ Pappas operates the following full-power stations in the following markets: WWSW-TV, Opelika, Alabama (Columbus, Georgia Designated Market Area or “DMA”); KPWB-TV, Ames, Iowa (Des Moines, Iowa DMA); KMPH-TV, Visalia, California, and KFRE-TV, Sanger, California (Fresno, California DMA) WTWB-TV, Lexington, North Carolina (Greensboro-Winston-Salem-High Point, North Carolina DMA); KAZH(TV), Baytown, Texas (Houston, Texas DMA); KTVG-TV, Grand Island, Nebraska, KHGI-TV, Kearney, Nebraska, KSNB-TV, Superior, Nebraska, and KWNB-TV, Hayes Center, Nebraska (Lincoln-Hastings-Kearney, Nebraska DMA); KAZA-TV, Avalon, California (Los Angeles, California DMA); WMMF-TV, Fond du Lac, Wisconsin (Green Bay, Wisconsin DMA); KPTM-TV and KXVO-TV, Omaha, Nebraska (Omaha, Nebraska DMA); KREN-TV, Reno, Nevada (Reno, Nevada DMA); KTNC-TV, Concord, California, (San Francisco, San Jose and Sacramento-

affiliates), the WB Network (5 affiliates), or the emerging Spanish-language Azteca America Network (5 affiliates).

Based on this experience, and on Pappas's belief in the importance of a strong, independent, and diverse free over-the-air television industry, Pappas actively participated in the 1998 Biennial Review rulemaking proceeding. In light of decisions in *Fox Broadcasting, Inc.*² and *Sinclair Broadcast Group, Inc.*³, and the subsequent release of the *Notice* in this proceeding⁴, Pappas submits these Comments, and urges the Commission to maintain the current 35% national broadcast television ownership cap because it clearly serves the public interest in promoting localism and maintaining diversity in the over-the-air broadcast television marketplace -- two longstanding and fundamental premises of the Communications Act of 1934, as amended. Moreover, the 35% national ownership cap provides a critical check on the increasing and alarming pace of consolidation in the broadcast industry. Pappas believes that the current cap preserves a critical balance in the network-affiliate relationship. This balance is

Modesto, California DMAs); KFWU-TV, Fort Bragg, California (San Francisco, California DMA), KPTH-TV, Sioux City, Iowa (Sioux City, Iowa DMA); and KSWT-TV, Yuma, Arizona (Yuma, Arizona/El Centro, California DMA).

In addition, Pappas owns and/or operates several low power television stations, some of which are also network affiliates.

² *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027 (D.C. Cir. 2002). The Court in *Fox Television* remanded to the Commission for further consideration the Commission's decision in the 1998 Biennial Regulatory Review not to vacate the national television ownership rule under Section 202(h) of the Commission's rules. 47 U.S.C. § 202(h) (2000).

³ *Sinclair Broadcast Group, Inc. v. FCC*, 248 F.3d 148 (D.C. Cir. 2002). The Court in *Sinclair* remanded to the Commission for further consideration the Commission's local television ownership rule that **was** adopted in 1999. *See Review of the Commission's Regulations Governing Television Broadcasting*, Report and Order, (1999) (the "*Local Television Order*").

⁴ 2002 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, *Notice of Proposed Rulemaking*, 17 FCC Rcd 18,503 (2002) (the "*Notice*"). The deadline for filing Comments in the instant proceeding was extended through January 2, 2003. *See Order*, 17 FCC Rcd 22,201 (2002). As such, these Comments are timely filed.

essential to the ability of the local broadcast licensee to fulfill its responsibility as a public trustee charged with addressing the needs and tastes of its local viewers.

Pappas further proposes a modification of the local television ownership rules to better reflect the realities of the local media marketplace, and believes that there is a compelling case for reforming these rules to facilitate the existence of duopolies in medium and small markets. Pappas therefore proposes the modification of the local television ownership rule based on the total viewing shares of all video programming in a particular market, not simply broadcast television programming. Pappas supports the proposal advanced by the National Association of Broadcasters, which would utilize the total viewing share of all video programming available to viewers in a given DMA, because such a modification would better gauge the availability of programming alternatives to viewers than an arbitrary standard based on eight broadcast television voices.

By definition, the consideration of the *total viewing share* would include television stations, both full power and Class A, located inside and outside the DMA, as well as cable networks and channels. Pappas believes that the consideration of the *total viewing share* is a more accurate method for determining the diversity of programming available to consumers in a local television market. Pappas agrees with the conclusion of the *Sinclair* Court that the “8 voice count” limited to broadcast television voices was an arbitrary and capricious measurement.

BACKGROUND

A. Regulatory History of Local and National Television Ownership Rules.

The Commission has enforced regulations limiting the control of broadcast facilities in both the local and national television markets since 1938.⁵ For more than sixty years, the Commission prohibited the common control of two television stations in a local market. Moreover, only after considerable review at each juncture, the Commission slowly relaxed the regulations relating to the number of television stations under common control on a national scale. From 1940 to 1954, the Commission slowly relaxed the number of television stations under common control to seven when the Commission adopted the “Rule of Sevens.”⁶ However, with the adoption of the Local Television Order in 1999 that the Commission decided to permit the common ownership of two television stations in a local market with certain restrictions.

The national television ownership restrictions remained unchanged from 1984⁷ until the passage of the Telecommunications Act of 1996, when the limit on the number of stations that could be commonly owned was eliminated, and the national audience cap was raised to 35%.⁸ Other changes made by Section 202 of the 1996 Act included the elimination of the national ownership limit for radio broadcast stations, the substantial relaxation of the local radio ownership rules, and a broadening of the Commission’s one-to-a-market waiver process to include the top 50 markets. *Id.* Additionally, Congress ordered the Commission to conduct a rulemaking proceeding to review the local television ownership rules. *Id.* §202(c)(2).

⁵ *Genesee Radio Corp.*, 5 FCC 183 (1938)(establishing the duopoly rule).

⁶ Amendment of Sections 3.35, 3.240, and 3.636 of the Rules and Regulations relating to the Multiple Ownership of AM, FM and Television Broadcasting Stations, 18 FCC 288 (1953).

⁷ Amendment of Section 73.3555 of the Commission’s Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, Report and Order, 100 FCC 2d 17, 21, 27 (1984) (the “1984 Report”)(adopting the 12 station national ownership limit).

⁸ Telecommunications Act of 1996, Pub. L. No. 104-104, §202(c), 110 Stat. 56 (1996)(the “1996 Act”).

In response, the Commission in 1999 adopted the *Local Television Order*, which authorized the common ownership of two television stations in a DMA, except for combinations of any two of the top four rated stations in the DMA, provided that at least eight independent, over-the-air voices remained in the market after the proposed combination.

Based, in part, on the recent adoption of the *Local Television Order*, the Commission subsequently declined to modify the national television ownership rules when it adopted the 1998 *Report*, in part because it had just started to permit duopolies in the local television market. Citing the unsettled nature of the television industry in light of the recent relaxation of the local television rules, and the possible adverse effects that the relaxation of the national television rules shortly thereafter would cause, the Commission determined that it would “proceed cautiously” so not to adversely “influence the bargaining positions between broadcast television networks and their affiliates.”

B. Fox Television and Sinclair Broadcast Group Decisions.

While stating that there was a sufficiently high probability that the 35% national ownership cap could be justified, the Court found the Commission’s rationale for maintaining it to be arbitrary and capricious in *Fox Television*. More recently, the Court similarly found the Commission’s rationale for its eight voices methodology to be arbitrary and capricious in *Sinclair*.

In both *Fox Television* and *Sinclair*, the Court of Appeals found the respective Commission decisions to be lacking in empirical evidence to support the respective Commission

⁹ 1998 Biennial Regulatory Review – ~~Review~~ of the Commission’s Broadcast Ownership rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 15 FCC Rcd 11,058, ¶¶ 25, 30 (1998) (“1998 *Report*”).

rules at issue. In *Fox Television*, the Court questioned the Commission's failure to proffer any evidence or other support for its decision to retain the ownership cap, especially in light of requirement contained in Section 202(h) of the Communications Act that the Commission make the affirmative decision that the national television ownership rule was "necessary in the public interest." *Id.* Furthermore, in *Sinclair*, the Court based its decision on the fact that the Commission failed to distinguish between the inclusion of non-television voices in the adoption of the current radio-television cross ownership rules and the exclusion of non-television voices in the adoption of the local television ownership rules. *Sinclair*, 284 F.3d at 164.

However, in both cases the Court implicitly endorsed the need for both local and national television ownership rules. In fact, the *Fox Television* Court concluded that there was a sufficiently high probability that the national television ownership rule may be justified, and that the Commission merely needed to provide a reasonable basis for its retention. *Fox Television*, 280 F.3d at 1048. Likewise in *Sinclair*, the Court concluded that the Commission adequately substantiated the need for some form of local television ownership rule consistent with its mandate of preserving localism and diversity. *Sinclair*, 284 F.3d at 160.

Based on these decisions, the Commission released the *Notice* in the instant proceeding seeking comment, *inter alia*, on the local and national television ownership rules. In addition, it commissioned the preparation of several economic studies to develop a record on which any decisions to modify the rules could be based." The Commission seeks a wide range of comments and evidence relating to the relationship between affiliates and networks, the state of the local and national advertising market, and the nexus between localism and the television

¹⁰ *FCC Seeks Comment On Ownership Studies Released By Media Ownership Working Group And Establishes Comment Deadlines For 2002 Biennial Regulatory Review Of Commission's Ownership Rules*, Public Notice, DA 02-2476 (rel. Oct. 1, 2002).

ownership rules. Based on Pappas's significant experience relating to each of these matters, the following comments are provided.

DISCUSSION

The Commission's national and local ownership rules were adopted to ensure a diversity of viewpoints and to protect against the undue concentration of broadcast media." The local ownership rules restrict the level of control that one entity may have in the local market, and thus directly impact the diversity of viewpoints available to viewers in their local television markets. Similarly, the national ownership rules restrict the overall control over the availability of programming, and serve as one of the sole remaining barriers to a highly concentrated marketplace wherein a handful of vertically-integrated conglomerates would dominate in both programming and distribution, and localism and diversity would become relics of the past.

A. The National Television Ownership Rule Must Be Retained.

As noted above, the *Fox Television* Court did not fundamentally question the need for a national television ownership restriction. Instead, the Court remanded the national ownership rule due in major **part** to what it regarded to be the Commission's failure to substantiate retention of the cap at 35%.

1. Public Interest Benefits of the Audience Cap

As noted above, the Commission's national television ownership rule is intended to encourage the diversity of programming and ownership. In order to determine the impact **of** the

¹¹ *1984 Report*, 100 FCC 2d at 18.

potential relaxation of the audience cap, and the inevitable rise in consolidation in the marketplace, the Commission commissioned a study to gauge the impact of concentration on the commercial advertising industry.

The Commission's economists have demonstrated that such consolidation harms the public welfare by introducing more advertising, much to the detriment of the amount of programming that would be provided by a broadcast station. Specifically, in *Theory of Broadcast Media Concentration and Commercial Advertising*, Working Group Study #6, the authors conclude that the increase in concentration of broadcast media may lead to a decrease in non-advertising broadcasting. In fact, the authors of the study considered both a strong and weak "switch off" factor, *i.e.*, the consumer changing channels, and concluded that both scenarios result in the decrease of non-advertising programming, adversely affecting the presumed consumer welfare derived from non-advertising programming. This led the authors to conclude that there is a positive relationship between the number of firms in the broadcast industry and consumer welfare in general. *Id.* pg. 23.

This relates to the fact that, as the television industry has become more concentrated, the programming typically offered by the networks reflects what Commissioner Copps accurately described as the "lowest common denominator."¹² Such programming decisions often ignore community standards and interests in favor of a one-size-fits-all approach. **As** discussed *infra*, broadcasters in medium and small markets are not in a strong position to argue with a network about which programming is acceptable, for fear of threat of termination of their affiliation. The current *national* ownership cap helps the medium and small market licensee retain a bare

¹²

Statement of Commissioner Michael J. Copps, *Call for Re-Examination of FCC's Indecency Definition, Analysis of Link between Media Consolidation and "Race to the Bottom"*, released November 21, 2002.

modicum of control over programming and some voice in determining what is best geared to the standards of their communities of license.

2. Preservation of Balance-of-Power Between Networks and Affiliates

Pappas is a network affiliate of three of the four major networks (Fox, ABC, and CBS), in addition to being affiliated with the WB Network and the emerging Spanish-language Azteca America Network. Of the Big Four networks, Pappas's most significant relationship is with Fox". Based on this experience, which spans 40 years in the broadcast business, Pappas also believes that maintaining the current 35% national television ownership cap is one of the last structural safeguards against the networks gaining total hegemony over the broadcast television industry, and is therefore critical to maintaining some leverage for affiliates in their relationship with the increasingly dominant national networks.

In 1995, the Commission repealed both the Prime Time Access Rule ("PTAR"), and the Syndication and Financial Interest rules ("Fin/Syn Rules"),¹⁴ the net effect of which was to permit networks to own and distribute their own programming, even during prime time, and to have a financial interest in syndicated programming. The repeal of these rules altered the

¹³ Five of Pappas' stations -- KMPH (Fresno DMA), KPTM (Omaha DMA), KPTH (Sioux City DMA), KTVG and KSNB (Lincoln/Hastings/Keamey DMA) and KBFX (Bakersfield, **CA**) -- are Fox affiliates. Thus, to the extent that the instant comments focus on the practices of the four major networks, such comments are based largely on Pappas's longstanding relationship with Fox.

Pappas also owns or operates KHGI and KWNB (Lincoln-Hastings-Keamey, Nebraska DMA) as ABC affiliates, and KSWT-TV (Yuma, AZ DMA) as a CBS affiliate.

¹⁴ *See Review of the Prime Time Access Rule, Section 73.658(k) of the Commission's Rules*, 11 FCC Rcd 546 (1995)(eliminating rule that prevented network affiliates from airing more than three hours of network programming during prime time); *See also Review of the Syndication and Financial Interest Rules Sections 73.659-73.663 of the Commission's Rules*, 10 FCC Rcd 12,165 (1995)(eliminating rules prohibiting networks from having financial interests in programs that they air and ownership rights to syndicated programs).

landscape between the networks and their affiliates, as networks rapidly became vertically integrated with syndicators and other programmers.

The relationship between the network and its affiliates is fundamental to assuring that localism and diversity of both ownership and programming continue to flourish. Under the typical affiliation agreement, the network benefits through the wide-area delivery of its programming, and affiliates benefit by gaining access to high-quality programming. This relationship, however, has shifted dramatically in favor of the networks in recent years, as networks have increasingly used their market power to coerce affiliates in numerous ways.

It is noteworthy in this regard that the *1998 Report*, citing the repeal of the Fin/Syn and PTAR rules, took note of the possibility that the “...relaxation of the national ownership limits could increase the bargaining power of networks by expanding their option to own rather than affiliate with broadcast television stations.”” The Court in *Fox Television* found that the potentially adverse impact of further relaxation of the ownership cap on network-affiliate relations was a “plausible” justification for retention of the cap under Section 202(h) if it was supported by evidence.¹⁶

In support of the maintenance of the national television ownership rule, and thus, the maintenance of the balance-of-power between networks and their affiliates, the following facts are highly relevant. The balance-of-power affects the ability of the affiliates to exercise some independent judgment in providing locally-tailored programming, and maintains some resistance to the lowest-common-denominator effect cited by Commissioner Copps.

Specifically, it is notable that many networks have attempted – often successfully -- to institute significant levels of control over individual affiliates. First, as noted in the Network

¹⁵ *1998 Report*, ¶ 30.

¹⁶ *Fox Television*, 280 F.3d at 1043.

Affiliated Stations Alliance Petition for Declaratory Relief,” affiliation agreements presented by Fox violate the “right-to-reject” rule¹⁸ by giving Fox the right to unilaterally terminate an affiliation if an affiliate makes two “unauthorized” preemptions a year, and even allows Fox to terminate based solely on its “reasonable” belief that such preemptions are **likely** to occur. Moreover, Fox restricts the exercise of the “right to reject” rule that allows local affiliates to preempt network programs in favor of programming of greater local importance, by insisting that the affiliate contractually agree that it does not foresee the need to make any such preemptions except in narrow circumstances dictated by Fox.

Second, the Fox Network has attempted to force affiliates to surrender control of their digital spectrum or face cancellation of the affiliation agreement. Specifically, **Fox** has required that affiliates turn over all remaining digital capacity for carriage of services provided by, and presumably for the sole benefit of, the Fox Network. *See NASA Petition*, pg. 10.

Moreover, both ABC and Fox have attempted to control their affiliates’ efforts to assign their television licenses to third-parties by incorporating onerous and impermissible provisions in their affiliation agreements. *Id.* In fact, some ABC and Fox agreements, typically in small and medium markets where independently-owned stations have limited economic leverage, contain provisions which permit the network unilaterally to cancel a network affiliation agreement if the network buys a television station in the market. Thus, it would not be unforeseeable, should a local affiliate exercise its best judgment and preempt network programming that, in its judgment does not conform with the local standards of decency or is not of local importance, that the

¹⁷ *Network Affiliated Stations Alliance*, Petition for Declaratory Relief, filed on May 8, 2001 (the “*NASA Petition*”)

¹⁸ 47 C.F.R. § 73.658(e) (2002)

network could purchase another station in the market, and unilaterally cancel the network affiliation agreement.

The elimination or lifting of the audience cap would further weaken the position of local broadcast licensees to the detriment of their viewers. The four leading networks already own and operate stations in New York, Los Angeles and Chicago, and many other large markets, and further relaxation of the national television ownership rule would further solidify the dominance of the four major networks contrary to the stated goals of the **1934** and 1996 Acts of promoting competition, localism and diversity. If it only took nine months for twenty percent of the television licensees to be eliminated after the passage of the 1996 Act,¹⁹ one could imagine the immediate and sweeping consolidation of the television industry that would occur if the 35% national ownership cap were eliminated or even rolled back to 50%.

B. The Local Television Ownership Rule Must Be Modified to Reflect The State of Local Television Markets.

In *Sinclair*, the Court's primary justification for remanding the local television ownership rule was the fact that the Commission failed to substantiate the distinction between the "voices" counted under the local television rule, and those "voices" counted for the radio-television cross-ownership rule. Specifically, the Court stated that:

[h]aving found for purposes of cross-ownership that counting other media voices 'more accurately reflects the actual level of diversity and competition in the market,' the Commission never explains why such diversity and competition should not also be reflected in its definition of 'voices' for the local ownership rule."

¹⁹ *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, Fourth Annual Report, CS Docket No. 97-141 (rel. Jan 13, 1998) (citing the fact that the number of television station owners dropped 21% in **1996**).

²⁰ *Sinclair*, 248 F.3d at 164 (internal citation omitted).

Moreover, the Court rejected arguments that cable and other video programming services were not available to 20% of the audience, concluding that, since the Commission included these sources in the cross-ownership rule, it must substantiate the distinction between the two rules. *Id.*

In light of this “mandate” from the D.C. Circuit, Pappas submits that any distinction drawn that would exclude other widely viewed programming in a local market would ultimately be deemed arbitrary and capricious upon subsequent judicial review.

Instead, in order to more accurately reflect the landscape of the local video programming market, Pappas proposes that the Commission include those video programmers, including cable networks and channels, that have a reportable audience share as defined by Nielsen, in determining the relevant local market, based on an average of the most recent four Nielsen books. Pappas joins with the National Association of Broadcasters in proposing that the Commission permit two television stations in the same DMA to be commonly-owned under the following circumstances:

1. two stations each having an average 7:00am-1:00am total viewing share of less than 10;
2. two stations, one with an average 7:00am-1:00am total viewing share of 10 or greater, and one station with an average 7:00am-1:00am total viewing share of less than 10; and
3. two stations, each having an average 7:00am-1:00am total viewing share of greater than 10, on a case-by-case basis, considering such factors as whether any of the stations have failed, are failing, or have yet to be constructed.

The use of the “total viewing share” for purposes of this proposed local television rule would include all broadcast facilities that participate in the local market, including those stations outside the DMA, as well as cable networks and channels. By including these viewers in the local market’s “audience pie”, the respective television stations’ attributable audience shares are

reduced. The net result is to increase the ability of medium and small market licensees to have the same duopoly opportunities currently available primarily to those in large markets.

Pappas proposes that combinations meeting this “10/10” standard would presumptively be considered to be in the public interest, and that other combinations, including those between two stations each with total audience shares greater than 10, or other non-conforming combinations, should be reviewed on a case-by-case basis. Such factors to be considered in a non-presumptive case would be the economic state of the specific television stations involved, along with the relevant television **DMA**.

Pappas believes that the case for reforming the current duopoly rules is compelling. Many small and medium market broadcasters, except perhaps for those that are the ratings leaders in their markets, are generally experiencing significant financial hardship. These financial burdens are often so severe as to threaten the viability of these stations, and will certainly hinder the viability of many of their local news operations. Permitting common ownership of two stations in such markets will provide essential financial relief and help ensure the viability of local news operations at smaller market stations.

The proposed “10/10” standard would assist the ailing broadcast industry to recover from the financial difficulties currently in existence, and would facilitate the digital television roll-out for many stations located in small and medium-sized markets. Many television stations in these markets have been forced to construct “low power” digital facilities so to comply with the Commission’s forced march towards a digital world, regardless of whether the consumers in these largely rural markets intend to participate in the transition in the near term.

For those stations not complying with the 10/10 standard, Pappas proposes that the Commission take into consideration whether any of the stations are failing, unbuilt, or have

already ceased operations. In demonstrating the status of the television station, Pappas believes that it is sufficient for the parties to demonstrate that the affected station lacks viability to be an active independent competitor in the market, and that they should not be forced to demonstrate that there are no “out-of-market” buyers for the station. Additionally, under these circumstances, the Commission should also consider whether the combination of the stations would aid in the transition to digital television, in light of the Commission’s strong interest in “encourag[ing] broadcasters to offer digital television as soon as possible.”²¹

Finally, the adoption of this proposal would not significantly affect the diversity of viewpoints in the local markets, since the inclusion of all video programmers in the local market would necessarily include additional sources not previously considered under the current local ownership rule. As such, if the Commission has previously considered at least eight independent voices as adequate for diversity’s sake, the consideration of the multitude of video programming delivered by multi-channel video program distributors would certainly far surpass the magic number of eight.²²

Thus, Pappas urges the Commission to adopt the revised local ownership rule as proposed herein. The local television market is quite competitive, including television stations from other markets, and cable/satellite programming. The instant proposal would provide a more accurate snapshot of the local video programming market, and would provide the realization of economic efficiencies currently only available in larger markets.

²¹ *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, Fifth Report and Order, 12 FCC Rcd 12,810,12812 (1997).

²² The *Sinclair* Court specifically declined to address the number of voices that would satisfy the Commission’s goals for diversity. However, it did state that such “line drawing” would receive substantial deference by the Court, if such line drawing is reasonable, and based on the available evidence.

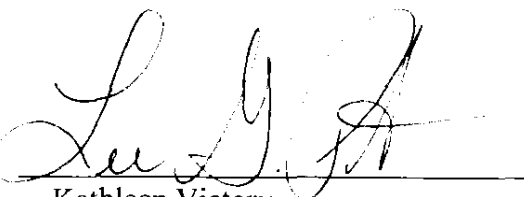
CONCLUSION

Pappas believes that the Commission's longstanding goals of fostering diversity and localism in the broadcast television industry necessitate the retention of the 35% national ownership cap. The preservation of the current cap is essential to maintaining some balance in a network-affiliate relationship in which the balance of power has already tilted dramatically in favor of the networks. This balance is the bedrock of a competitive industry, and is vital to ensuring that a diversity of viewpoints suited to local needs is preserved for the benefit of the viewing public.

Pappas also believes that the local television ownership rules must be modified in a manner that preserves diversity while more accurately measuring the programming alternatives available in a given market. Since the *Sinclair* Court has remanded the rule to the Commission for its reconsideration, Pappas urges the Commission to adopt a rule that will pass judicial muster. The adoption of adoption of the "10/10" market share-based presumptive standard is rational and legally defensible as a measure of competitive alternatives in that it measures all actual available programming sources in a local market. It also serves the important goal of strengthening local broadcasters in small and medium markets, ensuring their viability, and helping to ensure the financial viability of local news operations in smaller markets.

Respectfully submitted,

PAPPAS TELECASTING COMPANIES

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